

OREGON DEPARTMENT OF ENERGY

Regarding Statutes, Administrative Rules, and Other)
Requirements Applicable to the Proposed **BOARDMAN**) **SECOND AMENDED**
TO HEMINGWAY TRANSMISSION LINE) **PROJECT ORDER**

ISSUED BY
OREGON DEPARTMENT OF ENERGY
550 Capitol Street NE
Salem, OR 97301-3742

Project Order - Issued March 2, 2012

First Amended Project Order - Issued December 22, 2014

Second Amended Project Order - Issued July 26, 2018

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1 I. INTRODUCTION

2 The Oregon Department of Energy (ODOE or the Department) issues this Second Amended Project
3 Order for the proposed Boardman to Hemingway Transmission Line (B2H) in accordance with Oregon
4 Administrative Rule (OAR) 345-015- 0160. The applicant is Idaho Power Company (IPC or the applicant).
5 The proposed facility is a 500 kV high-voltage overhead electric transmission line, approximately 300
6 miles in length. The original Project Order was issued by ODOE on March 2, 2012, and the First Amended
7 Project Order was issued on December 22, 2014.

8 Oregon Revised Statute (ORS) 469.330(3) and OAR 345-015-0160 require the Department to issue a
9 Project Order to the applicant establishing the application requirements for the proposed facility. As
10 provided in ORS 469.330(4), this is not a final order and the Department or the Council may amend this
11 Project Order at any time. The Department is issuing this Second Amended Project Order at this time in
12 order to update references to applicable administrative rules that have changed in the four years since
13 the previous Project Order was issued. It is also being issued to update Special Advisory Groups (SAGs)
14 that have added or removed due to route changes since the preliminary application was first submitted
15 in 2013. Finally, this Second Amended Project Order is being issued to accurately reflect the necessary
16 information that the applicant is required to provide in the application for site certificate (ASC).

17 (a) Notice of Intent and Project Order

18 On July 6, 2010, the Department received a Notice of Intent (NOI) from IPC to file an application for site
19 certificate (ASC) for a new 500-kilovolt (kV) transmission line. The proposed B2H transmission line
20 (proposed facility) would be approximately 300 miles long and extend from a switching station to be
21 constructed near Boardman, Oregon to the existing Hemingway Substation located in Owyhee County,
22 Idaho. Through the switching station in the Boardman area and the Hemingway Substation, the
23 proposed transmission line would connect with other transmission lines at the two substations to
24 transmit electricity on a regional scale and serve IPC's native loads. The transmission line would cross
25 five Oregon counties and one Idaho county. Approximately 66 percent of the transmission line corridor
26 is privately-owned, 33 percent is managed by federal agencies, and one percent is owned by state
27 government. The proposed facility requires a site certificate from the Oregon Energy Facility Siting
28 Council (EFSC or Council), as well as approval from federal land management agencies for those portions
29 of the proposed transmission line that are located on federally-managed lands.¹

30 On July 16, 2010, the Department issued a public notice of the NOI to the EFSC mailing list and to
31 adjacent property owners as defined at Oregon Administrative Rule (OAR) 345-020-0011(1)(f). This
32 public notice was distributed jointly with the Bureau of Land Management (BLM), the lead agency
33 overseeing the National Environmental Policy Act (NEPA) review process, to satisfy both EFSC and NEPA
34 requirements. The Department also published a notice in multiple local area newspapers.

35 The notices announced a series of public scoping meetings that were held in several cities along the
36 proposed transmission line route, and requested public comments on the NOI by September 20, 2010.
37 The public scoping meetings took place on the advertised dates in multiple cities along the route as
38 proposed in the NOI. Numerous members of the public expressed concern about the proposed
39 transmission line project during the scoping period. At the close of the comment period, the BLM and
40 the Department had received 464 written and verbal comments.

¹ The proposed facility crosses lands managed by the Bureau of Land Management, the U.S. Forest Service and the United States Navy and IPC must receive approvals from those agencies for the facility.

1 In preparation for review of the proposed facility, the Council appointed each of the five impacted
 2 Oregon counties as a Special Advisory Group (SAG).² On July 16, 2010, IPC distributed the NOI to the
 3 SAG’s and other reviewing agencies identified by the Department. In accordance with OAR 345-020-
 4 0040, the NOI was sent with a memorandum from the Department requesting comments from
 5 reviewing agencies on or before September 22, 2010.

6 On March 2, 2012, the Department issued a project order in accordance with OAR 345-015-0160, which
 7 requires the Department to specify the state statutes, administrative rules, and local, state, and tribal
 8 permitting requirements applicable to the construction and operation of the proposed facility. The
 9 project order also outlines the application for site certificate requirements from OAR 345-021-0010 that
 10 are relevant to the proposed facility. The First Amended Project Order was issued by ODOE in December
 11 2014.

12 **(b) Preliminary Application for Site Certificate and Amended Project Orders**

13 On February 27, 2013, IPC submitted a preliminary Application for a Site Certificate (pASC) to ODOE.
 14 Thereafter, and in compliance with OAR 345-021-0050(1), ODOE prepared a memorandum to reviewing
 15 agencies and compiled a distribution list, including all reviewing agencies listed in OAR 345-001-0010. In
 16 accordance with ORS 469.350(2) and OAR 345-021-0050, IPC distributed the memorandum and a copy
 17 of the pASC to each of the reviewing agencies listed in Table 1. Cities that are not designated as SAG’s
 18 are identified as reviewing agencies because they are within the 10 mile analysis area for public services
 19 from the site boundary.

20 **Table 1. Reviewing Agency Distribution List**

State Agencies	
<ul style="list-style-type: none"> • Oregon Department of Environmental Quality • Oregon Water Resources Commission, through the Oregon Water Resources Department • Oregon Fish and Wildlife Commission, through the Oregon Department of Fish and Wildlife • Department of Geology and Mineral Industries • Oregon Department of Aviation • Department of State Lands • Oregon Department of Transportation 	<ul style="list-style-type: none"> • Oregon Department of Forestry • Oregon Public Utilities Commission • Oregon Department of Agriculture • Department of Land Conservation and Development • Office of State Fire Marshal • State Historic Preservation Office • Oregon Parks and Recreation Department
Table 1 (continued). Reviewing Agency Distribution List	
Federal Agencies	

² Pursuant to ORS 469.480, the governing body of a local government within whose jurisdiction the facility is proposed to be located shall be designated by EFSC as a “special advisory group.”

<ul style="list-style-type: none"> • United States Navy • Bureau of Reclamation 	<ul style="list-style-type: none"> • United States Forest Service • Bureau of Land Management
Native American Tribes	
<ul style="list-style-type: none"> • Confederated Tribes of the Umatilla Indian Reservation • Burns Paiute Tribe 	<ul style="list-style-type: none"> • Confederated Tribes of the Warm Springs
Counties and Cities	
<ul style="list-style-type: none"> • Baker County (SAG) • Malheur County (SAG) • Morrow County (SAG) • Umatilla County (SAG) • Union County (SAG) • City of Adrian • City of Baker City • City of Boardman • City of Cove • City of Echo • City of Haines • City of Hermiston • City of Huntington (SAG) 	<ul style="list-style-type: none"> • City of Irrigon • City of Island City • City of La Grande • City of Lexington • City of North Powder (SAG) • City of Pilot Rock • City of Stanfield • City of Umatilla • City of Union • City of Vale
Other Reviewing Agencies	
<ul style="list-style-type: none"> • Pacific Northwest Electric Power and Conservation Council 	

1

2 In May 2013, the BLM issued a press release identifying the routes it intends to analyze in the Draft
 3 Environmental Impact Statement (DEIS) for the proposed facility. BLM’s preliminary environmentally
 4 preferred alternatives include two route segments not included in the pASC. As a result, IPC indicated its
 5 intent to amend the pASC to include the alternative route segments identified in the DEIS. The BLM
 6 issued the Final Environmental Impact Statement (FEIS) in November, 2016. Finally the BLM published
 7 the Record of Decision on November 17, 2017 which identified the agency’s selected route.

8 The applicant submitted an amended preliminary application for site certificate (ApASC) on July 19, 2017
 9 to reflect route changes and other project modifications, as discussed below. In accordance with OAR
 10 345-021-0090(2), a preliminary application may be amended at any time.

11 The Second Amended Project Order reflects changes that have resulted from rulemaking, specifically to
 12 OAR 345-021-0010(1)(p) and (q), OAR 345-022-0010(1)(h), and OAR 345-022-0060. The Second
 13 Amended Project Order also removed references to ORS 469.310 because it is a statutory policy rather
 14 than a Council Standard for siting energy facilities. It also updated the reviewing agency list based on the
 15 proposed and alternatives routes as provided by the applicant in the ApASC submitted to ODOE in July,
 16 2017.

17 Section II of this project order outlines the EFSC regulatory framework and references the main statutes
 18 and rules that govern the EFSC energy facility siting process (per OAR 345-015-0160(1)). Section III

1 discusses the primary application content requirements under OAR 345-021-0010. Section IV specifies
 2 the analysis areas for the proposed facility. Section V contains a brief discussion of potential issues of
 3 concern to Native American tribal governments in the facility analysis area. Section VI summarizes
 4 comments received by the Department from members of the public that address matters within the
 5 jurisdiction of the Council that the applicant must consider in the application for a site certificate.
 6 Section VII addresses the use of the information developed for the NEPA environmental impact
 7 statement, Section VIII sets forth the expiration date of the Notice of Intent, Section IX discusses project
 8 order amendments and application completeness, and Section X describes the applicant’s duty to
 9 comply with applicable requirements.

10 ORS 469.401(4) provides that a site certificate issued by the Council does not govern certain matters.
 11 Matters that will not be governed by the site certificate may be identified in this project order. However,
 12 the project order clearly identifies those as matters that will not be included in the governed by the site
 13 certificate, and they are not applicable to issuance of the site certificate for the proposed facility
 14 pursuant to ORS 469.503(3). Throughout this Second Amended Project Order, the definitions in ORS
 15 469.300 and OAR 345-001-0010 apply, except where otherwise stated or where the context indicates
 16 otherwise.

17 **II. EFSC REGULATORY FRAMEWORK**

18 Issuance of an EFSC site certificate is governed by the statutory requirements in ORS 469.300 et seq. and
 19 administrative rules in OAR chapter 345. The following divisions of OAR Chapter 345 include rules
 20 related to application requirements, EFSC review of an application, and construction and operation of an
 21 approved facility:

22 **OAR Chapter 345, Division 21** (Site Certificate Application Requirements) includes the primary site
 23 certificate application requirements. See Section III for specific information related to the site certificate
 24 application requirements for the proposed B2H facility.

25 **OAR Chapter 345, Division 22** (Council Standards for Siting Facilities) includes the regulatory standards
 26 by which the EFSC must evaluate the proposed facility. In addressing each of the Division 21 application
 27 requirements, the applicant shall refer to the Division 22 standard to which the requirement relates to
 28 ensure the application is responsive to the standards by which the Council must evaluate it.

29 **OAR Chapter 345, Division 23** (Need Standard for Non-Generating Facilities) specifies the information
 30 that must be provided as well as methods to be used in order to demonstrate the need for non-
 31 generating facilities. The application must demonstrate compliance with the Division 23 standards
 32 because the proposed B2H facility is a non-generating facility as defined in ORS 469.501(1)(L).

33 **OAR Chapter 345, Division 24** (Specific Standards for Siting Facilities) includes additional standards for
 34 specific types of EFSC applications. In addressing the Division 21 application requirements, the
 35 application shall refer to all Division 24 standards that apply to the proposed B2H facility to ensure the
 36 application is responsive to these standards.

37 **OAR Chapter 345, Division 25** (Site Certificate Conditions) includes the mandatory conditions that EFSC
 38 must apply to all site certificates, as well as applicable site-specific and monitoring conditions. Note that
 39 per the mandatory condition included at OAR 345-025-0006(10), the Council will include as conditions in
 40 the site certificate, if issued, all representations made in the application and supporting record the
 41 Council deems to be binding commitments made by the applicant.

42 **OAR Chapter 345, Division 26** (Construction and Operation Rules for Facilities) includes the compliance
 43 plan requirements that will apply if the Council issues a site certificate for the proposed facility. In
 44 addressing the Division 21 application requirements, the applicant shall refer to the compliance plan

1 requirements, described in OAR 345-026-0048 and reporting requirements, described in OAR 345-026-
 2 0080, to ensure that the facility, as proposed, can comply with these standards. Note that, if a site
 3 certificate is issued, the certificate holder must also comply with additional construction and operation-
 4 related regulations that may apply to the proposed facility that per ORS 469.401(4), may not be covered
 5 by the site certificate.

6

7 **III. APPLICATION REQUIREMENTS**

8 The applicant must adhere to the general requirements under OAR 345-021-0000, including, for all state
 9 and local government agency permit approvals that the applicant proposes to be included in and
 10 governed by the site certificate, the submittal of information that would otherwise be required by the
 11 state or local government agency in an application for such permit, license or certificate [OAR 345-021-
 12 0000(6)]. The applicant shall also submit copies of the applications for federally-delegated permits that
 13 are needed for construction or operation of the proposed facility [OAR 345-021-0000(7)]. OAR 345-021-
 14 0010(1) identifies the required contents of an application for a site certificate. Each of the paragraphs
 15 below indicates which provision(s) of OAR 345-021-0010(1)(a) – (dd) will apply to the proposed B2H
 16 facility. The application should also include the information described in OAR 345-021-0010(2) and (3).

17 **(a) Exhibit A – General Information about the Applicant**

18 **Applicable Paragraphs:** Paragraphs (A) through (D) apply.

19 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

20 **Discussion:** Note that paragraph (B) calls for a list of “participating persons, other than individuals.”
 21 Please note the definition of “Person” in ORS 469.300(21).

22 **(b) Exhibit B – General Information about the Proposed Facility**

23 **Applicable Paragraphs:** All paragraphs apply except (A)(i), (vi), (vii), and (viii).

24 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

25 **Discussion:** The description of the proposed facility in the application will form the basis for the
 26 description of the facility in the site certificate. The site certificate will require that IPC build the facility
 27 “substantially as described.” Exhibit B will also provide the basis for the facility description in the notice
 28 of application that ODOE will issue to reviewing agencies and public. Therefore, Exhibit B shall describe
 29 the facility in enough detail for members of the public and reviewing agencies to make informed
 30 comments. Exhibit B shall describe the facility sufficiently for ODOE staff to verify that the constructed
 31 project will meet any representations that are the basis for findings of compliance with applicable
 32 regulations for standards. It is recommended IPC not include descriptive material that IPC would not
 33 want to be held to in a site certificate condition.

34 The application must clearly describe the width of the corridor in which the micro-siting corridor right-of-
 35 way would be sited along the length of the proposed line. The application must specify the width of the
 36 permanent right-of-way IPC will request, and must justify that width. .

37 The application shall describe all related or supporting facilities that the applicant proposes to be
 38 included in and governed by the site certificate, including proposed multiple use areas, fly yards, and
 39 access roads. For existing roads or road segments that will be included as related or supporting facilities,
 40 include a general description of the proposed modifications and improvements. For multiple use areas
 41 and fly yards, include a description of the activities that are expected to occur at these areas.

1 The alternatives analysis described in section OAR 345-021-0010(1)(b)(D) must be consistent with the
2 analysis required by ORS 215.275 and the required information in this rule. The Council recognizes that
3 some of the factors in this rule compete with one another (for example, the requirements to both avoid
4 habitat and avoid agricultural land), but expects the application to demonstrate that all required factors
5 were considered.

6 **(c) Exhibit C – Location**

7 **Applicable Paragraphs:** All paragraphs apply.

8 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

9 **Discussion:** Maps shall indicate the “site boundary” as defined in OAR 345-001-0010(55). Maps shall
10 provide enough information for property owners potentially affected by the facility to determine
11 whether their property is within or adjacent to the site boundary. Major roads shall be named. IPC shall
12 include maps drawn to a scale of 1 inch = 2,000 feet or smaller when necessary to show detail. The
13 Department requests that IPC share GIS data for the proposed facility in a format that is compatible with
14 current Department software programs; accurate GIS data will help streamline the application review
15 process for the Department and reviewing agencies.

16 Maps shall clearly show the boundaries of the proposed corridor within which the transmission line
17 would be constructed, and shall include familiar landmarks such as roads and existing power lines that
18 reviewing agencies and affected landowners may use to identify the proposed route. Aerial photographs
19 with all roads identified are helpful for public interpretation and review. The site boundaries of all
20 proposed related or supporting facilities, including but not limited to access roads, temporary laydown
21 areas, switching stations/substations, must also be identified. Maps showing access roads included as
22 related or supporting facilities shall clearly depict where existing roads or road segments are proposed
23 to be in the site boundary. Also, clearly identify the county and city jurisdictions in which facility
24 components are proposed to be located. All county and city jurisdictions in which facility components
25 are proposed to be located are appointed as SAGs by EFSC.

26 Exhibit C shall contain a table listing the approximate land areas for both temporary disturbance
27 associated with construction and permanent footprint of structures associated with facility operation for
28 each type of disturbance or structure. This information needs to be consistent with information
29 provided in other exhibits.

30 **(d) Exhibit D – Organizational Expertise**

31 **Applicable Paragraphs:** All paragraphs apply.

32 **Related Council and Other Standards:** Organizational Expertise [OAR 345-022-0010]

33 **Discussion:** Regarding the ability to successfully construct the project “in accordance with site certificate
34 conditions,” the Council’s review is not limited to IPC’s ability to construct a transmission line. The
35 application must also demonstrate that IPC can honor all commitments and conditions regarding
36 minimization and mitigation of impacts on the resources protected by Council standards and applicable
37 regulations of other agencies.

38 Exhibit D shall include a safety and environmental regulatory compliance history for the last three years
39 that is focused on similar facilities owned or operated by the applicant, such as transmission lines and
40 substations. Evidence of successful completion of mitigation projects shall also be provided.

1 **(e) Exhibit E – Permits**

2 **Applicable Paragraphs:** All paragraphs apply.

3 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

4 **Discussion:** Exhibit E shall describe and discuss all state and local permits that the applicant proposes to
5 be included in and governed by the site certificate, as well as state and local permits that are related to
6 the siting, operation, and construction of the proposed facility but are not to be included in and
7 governed by the site certificate.³ Exhibit E shall also describe required federal and federally-delegated
8 permits. For federally-delegated permits needed for construction or operation, the Applicant must
9 submit a copy of the permit application to the Department, as required under OAR 345-021-000(7).

10 Although the Council does not have jurisdiction over the federally-delegated permits, the Council may
11 rely on the determinations of compliance and the conditions in federally-delegated permits in evaluating
12 the application for compliance with Council standards.

13 The following state agency and local government permits and approvals are expected to be required for
14 the proposed B2H facility. This list may not be exhaustive.

15 ***Oregon Department of Environmental Quality - Water Quality Division***

16 **Statute and Rule References:** ORS Chapter 468B (Water Quality); OAR Chapter 340, Division 45
17 (Regulations Pertaining To NPDES and WPCF Permits)

18 **Associated Application Requirements and Council Standards:** OAR 345-021-0000 (General
19 Requirements); OAR 345-021-0010(1)(i) (Exhibit I); OAR 345-021-0010(1)(v) (Exhibit V); OAR 345-022-
20 0000 (General Standard of Review); OAR 345-022-0120 (Waste Minimization Standard).

21 **Permits:** National Pollutant Discharge Elimination System (NPDES) Construction Storm Water 1200-C
22 permit, Clean Water Act Section 401 Water Quality Certificate.

23 **Authority:** These permits are federally-delegated from the EPA to Oregon DEQ. Neither permit will be
24 included in or governed by the site certificate.

25 **Discussion:** The U.S. Environmental Protection Agency (EPA) has delegated authority to ODEQ to issue
26 NPDES Storm Water Discharge permits for construction and operation activities pursuant to OAR 340,
27 Division 45.

28 In accordance with OAR 345-021-0000(7), the applicant shall submit to the Department one copy of the
29 NPDES permit draft application and Section 401 Water Quality Certification draft application, or provide
30 a schedule of the date by which the applicant intends to submit the application. Note that the
31 Department may not be able to find the application for site certificate complete before receiving a copy
32 of the draft permit applications and a response letter from the ODEQ. The ODEQ response letter shall
33 state that the agency has received a permit application from the applicant, identify any additional
34 information the agency is likely to need from the applicant based on the agency’s review of the
35 application as submitted, and provide an estimated date when the agency will complete its review and

³ This amended project order includes permits that are known at the time this order is issued to be related to the siting of the proposed facility. This list does not include permits that are statutorily excluded from the site certificate under ORS 469.401(4) and may exclude other permits that may not be related to the siting of the proposed facility or will otherwise not be included in or governed by the site certificate.

1 issue a permit decision. The applicant may incorporate this information into Exhibit I (Soils) of the site
2 certificate application or submit it separately in Exhibit BB.

3 ***Oregon Department of Fish and Wildlife***

4 **Statute and Rule References:** ORS 509.580 through 509.910; OAR 635, Division 412 (related to Fish
5 Passage)

6 **Permit:** Fish Passage Plan approval

7 **Authority:** Fish Passage Plan approval is to be included in and governed by the site certificate.

8 **Discussion:** OAR Chapter 635, Division 412 (Fish Passage) requires upstream and downstream fish
9 passage at all existing or new artificial obstructions in Oregon waters in which migratory native fish are
10 currently or have historically been present, except under certain clearly defined circumstances. A fish
11 passage plan that complies with OAR Chapter 635, Division 412 shall be included in Exhibit BB of the
12 application.

13 ***Oregon Parks and Recreation Department – State Historic Preservation Office***

14 **Statute and Rule References:** OAR Chapter 736, Division 51 (Archaeological Permits).

15 **Permit:** An Archaeological Excavation Permit may be required to conduct archaeological investigations.

16 **Authority:** This permit will not be included in or governed by the site certificate because it is necessary
17 prior to issuance of a site certificate.

18 **Discussion:** OPRD-SHPO provides technical review and recommendations related to the Council’s
19 Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090). To the extent information
20 related to this permit is relevant to that standard, the applicant shall incorporate this information into
21 Exhibit S of the site certificate application.

22 ***Oregon Department of State Lands - Removal-Fill Authorizations***

23 **Statute and Rule References:** ORS 196.800-990 (Removal of Material; Filling); and OAR Chapter 141,
24 Division 85 (Administrative Rules Governing the Issuance and Enforcement of Removal-Fill
25 Authorizations Within Waters of Oregon Including Wetlands).

26 **Permit:** A removal-fill permit is required if 50 cubic yards or more of material is removed, filled or
27 altered within a jurisdictional water of the State (OAR 141-085-0520).

28 **Authority:** Removal-fill permit(s) are state permits that will be included in and governed by the site
29 certificate.

30 **Discussion:** The applicant shall include in its application information to support a finding on whether
31 removal-fill permits will be required. The applicant shall incorporate this information into Exhibit J of the
32 site certificate application. A Compensatory Wetland Mitigation Plan which meets the requirements of
33 OAR 141-085-0680 through OAR 141-085-0715 must be provided to replace all lost functions and values
34 previously provided by the impacted wetlands and waterways.

35 ***Oregon Department of Forestry***

36 **Statute and Rule References:** ORS 477.625 (Permit to Operate Power Driven Machinery); ORS 527.670
37 (Notification of Operation and Prior Approval).

38 **Permit:** Permit to Operate Power Driven Machinery; Notification and Prior Approval; Burn Permit (OAR
39 629-043-0040).

1 **Authority:** Permit to Operate Power Driven Machinery, Notification and Prior Approval, and Burn
2 Permit will not be included in or governed by the site certificate.

3 **Discussion:** A portion of the proposed facility will be located on forest land. Construction activities on
4 forest lands require a Permit to Operate Power Driven Machinery from the Oregon Department of
5 Forestry (ODF). This permit does not relate to the siting of the facility and will therefore not be included
6 in or governed by the site certificate. It is recommended the applicant contact ODF to determine the
7 requirements for obtaining this permit, or any other required permits or approvals from ODF.

8 If the removal of trees would be necessary as part of the proposed project development, and such
9 removal is part of a commercial operation, that activity may be subject to the Oregon Forest Practices
10 Act.

11 ***Oregon Department of Transportation***

12 **Statute and Rule References:** OAR Chapter 734, Division 51 (Highway Approaches and Access Control),
13 and Division 55 (Pole Lines, Buried Cables, and Miscellaneous Operations)

14 **Permits:** Utility Facility Permit, Oversize Load Movement Permit/Load Registration, State Highway
15 Approach Permits (Construction and Operation/Maintenance).

16 **Authority:** Permits to Operate, Maintain, and Use a State Highway Approach and to Construct a State
17 Highway Approach will not be included in and governed by the site certificate. Utility Facility Permits,
18 Oversize Load Movement Permits are not related to the siting of the proposed facility and will therefore
19 not be included in or governed by the site certificate.

20 **Discussion:** Any utility installations within the right of way of a state highway in Oregon will require a
21 Utility Facility Permit issued by the Oregon Department of Transportation (ODOT). It is recommended
22 the applicant review the requirements of OAR 734-055-0080 concerning installation of utilities within
23 interstate highway rights of way and provide adequate evidence to ODOT to demonstrate the need for
24 longitudinal installations, if such installations will be proposed.

25 The Oversize Load Movement Permit/Load Registration applies to the operation of vehicles transporting
26 loads that exceed legal limits and is issued for vehicles or loads having weight or dimension greater than
27 that allowed by statute. The applicant may need to obtain this permit/registration for movement of
28 construction cranes and other equipment and materials.

29 Any access from Oregon state highways may require State Highway Approach Permit. It is
30 recommended the applicant contact ODOT directly to determine the requirements for obtaining an
31 access permit, if any are needed.

32 ***Oregon Department of Agriculture, Plant Division - Native Plant Conservation Program***

33 **Statute and Rule References:** ORS Chapter 564 (Wildflowers; Threatened or Endangered Plants); and
34 OAR Chapter 603, Division 73 (Plants: Wildflowers and Endangered, Threatened, and Candidate Species).

35 **Associated Application Requirements and Council Standards:** OAR 345-021-0010((1)(q) (Exhibit Q); OAR
36 345-022-0000 (General Standard of Review); OAR 345-022-0070 (Threatened and Endangered Species
37 Standard).

38 **Permit:** Public land action permit or consultation with the Oregon Department of Agriculture (ODA)
39 potentially required for actions on non-federal public land that may affect state-listed plant species.

40 **Authority:** Public land action permit or consultation would be included in and governed by the site
41 certificate.

1 **Discussion:** ODA provides technical review and recommendations regarding compliance with the
2 Council’s threatened and endangered species standard (OAR 345-022-0070) as it relates to plant
3 species. The Council’s Threatened and Endangered Species standard applies to all land in Oregon,
4 including private and public land. OAR 603-073-0070 contains the state list of endangered and
5 threatened plant species. OAR 603-073-0080 gives ODA the authority to designate candidate plants. If
6 the applicant finds any state-listed threatened or endangered plant species on state-managed land that
7 may be affected by the proposed facility, it must address the requirements of OAR 603-073-
8 0090(5)(d)(A)-(E) in the application for a site certificate.⁴

9 **Local Governments: Morrow County; Umatilla County, Union County, Baker County, Malheur County**
10 **City of North Powder; City of Huntington**⁵

11 **Statute and Rule References:** ORS 469.504(3); ORS Chapters 215 and 221; OAR 660, Division 33

12 **Associated Application Requirements and Council Standards:** OAR 345-021-0010(k) (Exhibit K); OAR
13 345-022-0030 (Land Use)

14 **Land Use Permits: Morrow County:** Land Use Decision (EFU); General Industrial Zone Zoning Permit;
15 Port Industrial Zone Zoning Permit; Flood Plain Development Permit; **Umatilla County:** Land Use
16 Decision and Zoning Permit (EFU); Conditional Use Permit (EFU), Conditional Use Permit (GF); Goal 4
17 Exception (GF); LI and RTC Conditional Use Permits; Flood Plain Development Permit; **Union County:**
18 Land Use Decision (EFU); Conditional Use Permit (EFU); A-4 Conditional Use Permit; Permit, Goal 4
19 Exception; Flood Plain Development Permit; **Baker County:** Land Use Decision (EFU); Conditional Use
20 Permit (RSA); **Malheur County:** Land Use Decision (EFU); Conditional Use Permit (EFU); **City of North**
21 **Powder:** Conditional Use/Temporary Use Permit; **City of Huntington:** Land Use Decision/Temporary Use
22 Permit

23 **Authority:** Each of the above-listed permits will be included in and governed by the site certificate, flood
24 plain permits not included.

25 **Discussion:** The applicant has elected for EFSC to determine compliance with the substantive criteria of
26 all affected local governments’ comprehensive plans and land use ordinances under ORS 469.504(1)(b).
27 The above-listed local permits will be included in and governed by the site certificate. The affected local
28 government Special Advisory Groups (SAGs) may have additional permitting requirements that may or
29 may not relate to the construction or operation of the facility. The applicant shall identify those permits
30 or approvals and include an analysis of whether each is required to be included in and governed by the
31 site certificate.

32 **Third-Party Permits:**

33 The applicant may rely upon third-party permits in its application for site certificate. If the applicant
34 relies upon a state or local government permit issued to a third party that is related to the siting of the
35 proposed facility, the applicant must identify each third-party permit, and, for each, include evidence
36 that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement

⁴ OAR 345-022-0070 applies only to state-listed plant and animal species. Note also that OAR 345-022-0070 applies to all lands affected by a proposed facility including state, federal and private lands.

⁵ The First Amended Project Order included the City of La Grande and the City of Island City in the list of affected local governments and special advisory groups because a facility component (construction laydown or multiuse area) was proposed within the city limits. However, these areas were removed from the amended pASC (ApASC) and as such, no components of B2H are proposed within the City of La Grande or the City of Lisland City city limits.

1 with the third party for access to the resource or service to be secured by that permit; evidence that the
2 third party has or, has a reasonable likelihood of obtaining, the necessary permit; and, an assessment of
3 the impact of the proposed facility on any permits that a third party has obtained and on which the
4 applicant relies to comply with any applicable Council standard (OAR 345-021-0010(1)(e)(E)).

5 If the applicant relies on a federally-delegated permit issued to a third party that is related to the siting
6 of the proposed facility, the applicant must identify the third-party permit and include evidence that the
7 applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the
8 third party for access to the resource or service to be secured by that permit. The applicant must
9 provide evidence that the responsible agency has received the permit application, and provide the
10 estimated date when the responsible agency will complete its review and issue a permit decision (OAR
11 345-021-0010(1)(e)(F)).

12 **(f) Exhibit F – Property Owners**

13 **Applicable Paragraphs:** All paragraphs apply

14 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

15 **Discussion** As explained in OAR 345-021-0010(1)(f), the notification requirements differ based on the
16 zoning along the length of the proposed transmission line (and any proposed alternative routes). The
17 Council’s notification requirement is for notice to all owners of record, as shown on the most recent
18 property tax assessment roll, within the specified distance from the proposed site boundary.

19 Changes to the proposed transmission line routes could result in changes to property owners requiring
20 notification. It is recommended that Exhibit F in the ASC indicate that, pursuant to direction by the
21 Department, the property owner list will be generated prior to the Department’s determination of
22 application completeness and in coordination with the Department, to ensure the application issued for
23 public comment has a current property owner list.

24 The Department requests that the property owner list be broken down by county. The property owner
25 notification list must include identification of map and tax lot information, and be accompanied by maps
26 that include the site boundary, a buffer from the site boundary consistent with OAR 345-021-0010(1)(f)
27 site distance, and the properties/tax lots that are within the applicable site distance. The applicant shall
28 submit the full property owner list, including any duplications that may appear in the list.

29 **(g) Exhibit G – Materials Analysis**

30 **Applicable Paragraphs:** All paragraphs apply.

31 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; Soil Protection
32 [OAR 345-022-0022]; Hazardous Waste and Hazardous Materials [ORS 465 and 466; OAR 340, Divisions
33 100 through 122]

34 **Discussion:** The Department uses the materials analysis to identify any hazardous materials whose
35 management and storage could affect the cost of site restoration because of the possibility of spills. The
36 applicant shall include in the application any proposed fuel storage areas, vehicle maintenance areas, or
37 other areas that will be utilized for activities that could result in a spill of a hazardous substance.
38 Additionally, identify the expected storage locations and quantities of hazardous materials expected to
39 be used during construction and operation of the facility.

40 The ODEQ Hazardous Waste program implements requirements of the EPA and is a federally-delegated
41 program. The applicant shall comply with ODEQ regulations concerning the storage and management of

1 hazardous materials and the clean-up and disposal of hazardous waste; however, note that compliance
2 with federally-delegated programs is outside EFSC jurisdiction.

3 **(h) Exhibit H – Geologic and Soil Stability**

4 **Applicable Paragraphs:** All paragraphs apply except (E).

5 **Related Council and Other Standards:** Soil Protection [OAR 345-022-0022]; Structural Standard [OAR
6 345-022-0020]

7 **Discussion:** The Department understands that detailed site-specific geotechnical investigation for the
8 entire site boundary is not practical in advance of completing the final facility design and obtaining full
9 site access. However, OAR 345-021-0010(h) requires evidence of consultation with the Oregon
10 Department of Geology and Mineral Industries (DOGAMI) prior to submitting the application if the
11 applicant proposes to base Exhibit H on limited pre-application geotechnical work. Exhibit H shall include
12 written evidence of consultation with DOGAMI regarding the level of geologic and geotechnical
13 investigation determined to be practical for the application submittal.

14 Any geotechnical reports included in Exhibit H as supporting evidence that the proposed facility will
15 meet the Council’s structural standard shall meet the Oregon State Board of Geologist Examiners
16 geologic report guidelines, as determined based on consultation with DOGAMI. In 2017, the Council
17 underwent rulemaking amending the Oregon Administrative Rules (OARs) 345-021-0010, 345-022-0020,
18 and 345-050-0060 to address rule language for structural, geologic, and seismic related issues and
19 hazards. The amended rule language focuses on the requirements of Exhibit H and the Structural
20 Standard to site-specific issues and risks, and allow for the appropriate consideration of evolving science
21 of seismic risk and hazard based on consultation with DOGAMI.

22 **(i) Exhibit I – Soils**

23 **Applicable Paragraphs:** All paragraphs apply.

24 **Related Council and Other Standards:** Soil Protection [OAR 345-022-0022]

25 **Discussion:** The applicant shall include information describing the impact of construction and operation
26 of the proposed facility on soil conditions in the analysis area. Describe all measures proposed to
27 maintain soil productivity during construction and operation. It is recommended that the applicant
28 consult with local farmers, landowners, soil conservation districts, and federal land managers regarding
29 mitigation of impacts to agricultural and forest lands. Specific discussion could include weed
30 encroachment, interference with irrigation equipment, and the potential for restrictions to aerial
31 applications caused by the proximity of transmission towers.

32 Exhibit I shall also include the required evidence related to the federally-delegated National Pollutant
33 Discharge Elimination System (NPDES) 1200-C permit application. OAR 345-021-0000(7) requires the
34 applicant to submit one copy of all applications for federally-delegated permits, or provide a schedule of
35 the date by which the applicant intends to submit the application. In addition to a copy of the federally
36 delegated permit application, the applicant must also provide a letter or other indication from the ODEQ
37 stating that the agency has received a permit application from the applicant, identifying any additional
38 information the agency is likely to need from the applicant based on the agency’s review of the
39 application, and estimating the date when the agency will complete its review and issue a permit
40 decision.

41 If the applicant intends to rely upon an erosion and sediment control plan to meet the Soil Protection
42 standard, provide a draft of the plan for review.

1 **(j) Exhibit J – Waters of the State and Removal-Fill Permits**

2 **Applicable Paragraphs:** All paragraphs apply.

3 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; Removal of
 4 Material, Filling [ORS 196.795-.990]; Administrative Rules Governing the Issuance and Enforcement of
 5 Removal-Fill Authorizations Within Waters of Oregon Including Wetlands [OAR Chapter 141, Division 85]

6 **Discussion:** The application shall include identification of wetlands and waters of the state for all areas
 7 within the site boundary, including access roads and temporary laydown areas. The applicant has
 8 proposed a “phased survey” approach for data collection during the site certificate review process. The
 9 Department understands that the entirety of the site boundary for the proposed facility may not yet
 10 have been surveyed for wetlands and waters due to limited site access. On April 24, 2018 the
 11 Department issued a memo titled; “Energy Facility Siting Council Decisions for Linear Facilities with
 12 Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line”. This memo
 13 outlines how the Department will review applications and make recommendations to Council for
 14 wetlands and waters of the state that have been evaluated in the pASC and ASC. Once IPC gains access
 15 to previously restricted areas, IPC shall include that information via a site certificate amendment
 16 process. Exhibit J shall include as much information as possible about the results of the field surveys
 17 conducted to date and the schedule for future surveys.

18 The applicant shall include in Exhibit J as much of the information required by OAR 345-021-0010(1)(j) as
 19 possible, and the proposed path forward to obtain the information necessary for the Council to find that
 20 the requirements for a removal-fill permit have been met. Information would include an itemized
 21 demonstration of each applicable provision of ORS 196.825 (Criteria for Issuance of a Permit) and OAR
 22 141-085-0550 (Application Requirements for All Authorizations). DSL requires a compensatory wetland,
 23 compensatory non-wetland, and temporary impacts mitigation plan be submitted with a removal-fill
 24 application.

25 **(k) Exhibit K – Land Use**

26 **Applicable Paragraphs:** Paragraphs (A), (C), and (D) of the rule apply.

27 **Related Council and Other Standards:** Land Use [OAR 345-022-0030]

28 **Discussion:** As there is federal land within the site boundary, the information required under Paragraph
 29 (D) must be provided. The applicant is seeking a Council determination of compliance with the Council’s
 30 land use standard under ORS 469.504(1)(b). The applicant shall review the comments received from
 31 each county and city and contact each affected county and city planning department to ensure that the
 32 application addresses the applicable land use criteria in each jurisdiction.

33 Although local comprehensive plans and land use ordinances may have been amended since local
 34 comments were provided, ORS 469.504(1)(b)(A) and OAR 345-021-0050(6)(b)(A) require that the
 35 applicable local land use criteria are those in effect on the date the preliminary application for site
 36 certificate was submitted, February 27, 2013, for the local jurisdictions identified in the preliminary
 37 application. This includes Morrow, Union, Umatilla, Baker, and Malheur counties, and the City of North
 38 Powder. The governing bodies of these five counties were designated as special advisory groups (SAGs)
 39 on October 7, 2011, following receipt by ODOE of the B2H NOI. The City Council of North Powder was
 40 designated as a SAG on March 15, 2013.

41 After submittal of the preliminary application, ODOE received a letter from IPC on July 12, 2013, in
 42 which IPC identified a need for two new multi-use areas. One of the new multi-use areas is located in
 43 the City of Huntington, and the second multi-use area was to be located in both La Grande and Island

1 City. In June, 2017, IPC confirmed that it had removed the proposed multi-use area and there were no
 2 longer any project components within the City limits of Island City or the City of La Grande. On June 6,
 3 2018 the Department issued letters to the City of Island City and the City of La Grande explaining a
 4 reassignment from a SAG to a reviewing agency because, due to route modifications within the ApASC,
 5 proposed facility components are no longer proposed within their jurisdictions.

6 As Huntington was not identified in the preliminary application, the applicable substantive criteria for
 7 this jurisdiction will be those in effect on the date that ODOE received the amended preliminary
 8 application (ApASC) July 19, 2017. As provided in ORS 469.401(3), if the Council issues a site certificate
 9 for B2H, the counties and cities will be bound to issue all required permits and other land use approvals,
 10 subject to the conditions set forth in the site certificate. The Huntington City Council was designated as a
 11 SAG on August 2, 2013.

12 Exhibit K shall include information necessary to demonstrate compliance with the applicable substantive
 13 criteria from each county and city code and comprehensive plan that are applicable to issuance of the
 14 required permits and approvals.

15 Exhibit K shall also provide evidence that the proposed facility would comply with the applicable
 16 statutory requirements related to the proposed facility, including ORS 215.283, and 215.275 and
 17 specifically including all requirements regarding the location of the proposed facility within EFU zones.

18 **(I) Exhibit L – Protected Areas**

19 **Applicable Paragraphs:** All paragraphs apply.

20 **Related Council and Other Standards:** Protected Areas [OAR 345-022-0040]

21 **Discussion:** The application must address the potential impacts to protected areas identified in OAR
 22 345-022-0040 within the Analysis Area.

23 Note that OAR 345-022-0040(1) generally prohibits siting of transmission lines through protected areas,
 24 which include state parks. However, under OAR 345-022-0040(2), EFSC may approve a route that passes
 25 through a protected area if the council determines that other routes outside the protected area would
 26 “have greater impacts.” If the transmission line routing proposed by the applicant will pass through a
 27 protected area, the applicant shall describe in detail the alternative routes it studied and provide
 28 analysis in the application to support a finding that routing the transmission line through the protected
 29 area would have less impacts than the alternatives.

30 Where OAR 345-022-0040(3) is applicable, ensure that the application provides evidence that the
 31 proposed line is routed within 500 feet of an existing utility right of way containing at least one
 32 transmission line with a voltage rating of 115 kV or higher.

33 Please note that compliance with the DEQ noise rules (Exhibit X) does not correlate to compliance with
 34 the noise assessment considered in the Protected Areas standard. Particularly, while construction noise
 35 is exempt from the DEQ noise rules, construction noise must be considered under the Protected Areas
 36 standard. However, information developed to demonstrate compliance with the DEQ noise rules (such
 37 as noise modeling) can be used in the assessment to meet the Protected Areas standard. A visual impact
 38 assessment is required as part of Exhibit L; while no specific methodology are required by EFSC rule, the
 39 applicant must demonstrate why the proposed facility is compliance with the Protected Areas standard.
 40 Visual simulations or other visual representations are not required, but can provide important evidence
 41 for use by the Department and Council in understanding the potential visual impact of the proposed
 42 facility to Protected Areas.

1 **(m) Exhibit M – Financial Capability**

2 **Applicable Paragraphs:** All paragraphs apply.

3 **Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-0050]

4 **Discussion:** To find that the proposed transmission line satisfies the Financial Assurance Standard (OAR
5 345-022-0050(2)), the Council must find that the applicant has a reasonable likelihood of obtaining a
6 bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful,
7 non-hazardous condition. The application shall include the type and amount of the applicant’s proposed
8 bond or letter of credit to satisfy the requirements of OAR 345-022-0050.

9 The applicant shall propose a bond or letter of credit in a form and amount adequate to restore the site
10 to a useful, non-hazardous condition in the event construction of the transmission line is not completed
11 or if the transmission line were to be retired. Recognizing that the permanence of the transmission line
12 can be less certain as circumstances change and technology evolves over time, it is recommended that
13 the applicant submit a proposal that recognizes the increased risks associated with changing
14 circumstances and/or an aging facility, and proposes a bonding mechanism commensurate with that
15 risk.

16 The application shall include a proposed a mechanism by which the certificate holder can keep the
17 Council apprised of the condition of the transmission line, evolving transmission technology, and the
18 line’s performance in the context of the larger northwest power grid; an age at which a bond would
19 become warranted to provide adequate restoration assurance in the event the transmission line were to
20 be retired or decommissioned; and the amount, or graduated amount, of that bond.

21 **(n) Exhibit N – Need for the Facility**

22 **Applicable Paragraphs:** All paragraphs apply.

23 **Related Council and Other Standards:** Need Standard for Non-Generating Facilities [OAR 345-023-0005,
24 OAR 345-023-0020, OAR 345-023-0030]; see also OAR 345-021-0000(8)

25 **Discussion:** The Council requires applicants to demonstrate public need for an electric transmission line
26 facility under the least-cost plan rule (OAR 345-023-0020), the system reliability rule for transmission
27 lines (OAR 345-023-0030), or by demonstrating that the transmission line is proposed to be within a
28 “National Interest Electric Transmission Corridor” designated by the US Department of Energy under
29 Section 216 of the Federal Power Act. The applicant may provide evidence demonstrating the need for
30 the facility under one or more of the methods described in Division 23. Note that on October 20, 2015,
31 OAR 345-023-0030 was updated to reflect the North American Electric Reliability Corporation (NERC)
32 Reliability Standards.

33 The Least-Cost Plan Rule (OAR 345-023-0020) can be satisfied if the Oregon Public Utility Commission
34 (PUC) acknowledges an energy resource plan/least-cost plan which identifies for acquisition in the short-
35 term plan of action the proposed facility or a facility substantially similar to the proposed facility. On
36 April 10, 2018 the Oregon PUC held a regular public meeting regarding Idaho Power's 2017 Integrated
37 Resource Plan. Based on PUC staff recommendations, the PUC acknowledged conducting ongoing
38 permitting, planning studies, and regulatory filings for the B2H transmission line and to conduct
39 preliminary construction activities, acquire long-lead materials, and construct the B2H project.

40 **(o) Exhibit O – Water Use**

41 **Applicable Paragraphs:** All paragraphs apply except (D).

42 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

1 **Discussion:** Exhibit O of the application must identify the sources of water to be used during
 2 construction and operation of the proposed facility, the quantity of water needed, and the means of
 3 disposal of all water discharges from the proposed facility. The application shall provide evidence and
 4 analysis to determine whether a new water right or water right transfer is required, and if so, evidence
 5 that supports a finding by the Council that the water right should be issued. [See ORS Chapter 537
 6 (Appropriation of Water Generally) or transfer of a water use under ORS Chapter 540 (Transfer or
 7 Forfeiture of Water Rights), including a discussion and evaluation of all relevant factors, including those
 8 factors listed in ORS 537.153(2) and (3), ORS 537.170(8) and OAR Chapter 690, Divisions 310 (Water
 9 Right Application Processing) and 380 (Water Right Transfers).]

10 Water not obtained from a municipal supplier may require a limited license. Because such licenses
 11 cannot authorize use or discharge of water outside a single basin, multiple limited licenses may be
 12 required. Limited licenses are under Council jurisdiction.

13 If a new water right, water right transfer, or limited license is required, Exhibit O must include adequate
 14 evidence for the Council to evaluate and make findings approving the required permit or license. It is
 15 recommended that the applicant consult with the Oregon Water Resources Department (OWRD) to
 16 ensure that all information otherwise required by OWRD is included in the site certificate application.

17 **(p) Exhibit P – Fish and Wildlife Habitat**

18 **Applicable Paragraphs:** All paragraphs apply.

19 **Related Council and Other Standards:** Fish and Wildlife Habitat [OAR 345-022-0060]; Fish and Wildlife
 20 Habitat Mitigation Policy [OAR 635-415-0025]

21 **Discussion:** The applicant has proposed a “phased survey” approach for data collection during the site
 22 certificate review process. The Department understands that the entirety of the site boundary for the
 23 proposed facility may not yet have been field-surveyed due to limited site access. On April 24, 2018 the
 24 Department issued a memo titled; “Energy Facility Siting Council Decisions for Linear Facilities with
 25 Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line”. This memo
 26 outlines how the Department will review applications and make recommendations to Council for fish
 27 and wildlife habitat and species that have been evaluated in the pASC and ASC. For linear facilities, such
 28 as transmission lines, there may be situations where the applicant is able to conduct field surveys on
 29 several parcels within the site boundary but may not have access on adjacent parcels. In such
 30 circumstances, it may be possible that the combination of on-site field surveys plus a desktop evaluation
 31 of existing data, aerial photography, and “over the fence” surveys may meet the information
 32 requirements of Exhibits P. If the field survey coverage is sufficient for ODOE and Oregon Department of
 33 Fish and Wildlife (ODFW) to consider that the information provided is representative of the fish and
 34 wildlife habitat, and sensitive species occurrence or habitat, it is possible that this information could be
 35 sufficient to be evaluated for compliance with the applicable Council fish and wildlife habitat standard.
 36 Exhibit P shall include as much information as possible about the results of the field surveys conducted
 37 to date for biological resources and the schedule for future surveys.

38 Exhibit P shall include an analysis of how the evidence provided supports a finding by the Council that
 39 the proposed facility meets the Council’s fish and wildlife habitat standard. Exhibit P must include the
 40 results of all surveys for fish and wildlife habitat in the analysis area. Exhibit P must also identify all state
 41 sensitive species that may be present in the analysis area and include the results of surveys for state
 42 sensitive species. Also include the survey methodology, including scope and timing of each survey.
 43 Surveys must be performed by qualified survey personnel during the season or seasons appropriate to
 44 the detection of the species in question. The applicant must also include in Exhibit P its habitat

1 categorization and tables depicting the estimated temporary and permanent impacts, broken down by
 2 habitat categories.

3 If particular fish and/or wildlife habitat or state sensitive species are identified within the analysis area
 4 that could be adversely affected as a result of the proposed facility, the applicant shall include
 5 description of the nature, extent and duration of potential adverse impacts and a description of any
 6 proposed mitigation measures. Fish and Wildlife Habitat Mitigation Policy (OAR Chapter 635, Division
 7 415) classifies six habitat categories and establishes a mitigation goal for each category. The applicant
 8 for a site certificate must identify the appropriate habitat category for all areas affected by the proposed
 9 facility and provide the basis for each category designation, subject to ODFW review. The applicant must
 10 show how it would comply with the habitat mitigation goals and standards by appropriate monitoring
 11 and mitigation. ODFW rules OAR 635-140-0000 through 635-140-0025 are applicable to EFSC’s review
 12 process in Oregon Sage-grouse habitat. The applicant shall apply ODFW identified sage-grouse core, low
 13 density, and general habitat. Development actions must be mitigated by the applicant for both direct
 14 and indirect adverse impacts to sage-grouse and their habitats. Pursuant to OAR 635-415-0025(7), the
 15 applicant is exempt from fulfilling the avoidance test contained in OAR 635-140-0025 Policy 2,
 16 subsections (a), (b), (c) and (d)(A).

17 As a result of the access timing issues for this proposed facility, it is recommended the applicant provide
 18 proposed site certificate conditions for the Council’s consideration related to requirements for the
 19 applicant to complete all unfinished surveys within the project’s site boundary prior to construction. The
 20 proposed site certificate conditions shall also address submittal requirements for reporting future
 21 survey results, adjustment of previously calculated impact areas (if necessary), and the applicant’s
 22 proposed approach to document approval of final results by agencies or the Council prior to
 23 commencing construction activities.

24 **(q) Exhibit Q – Threatened and Endangered Species**

25 **Applicable Paragraphs:** All paragraphs apply.

26 **Related Council and Other Standards:** Threatened and Endangered Species [OAR 345-022-0070]

27 **Discussion:** OAR Chapter 635, Division 100 (Wildlife Diversity Plan) and ODFW’s website contain the
 28 State list of threatened and endangered fish and wildlife species. Threatened and endangered plant
 29 species are protected by the Oregon Department of Agriculture. The applicant shall include in its
 30 application for a site certificate state-listed threatened and endangered fish, wildlife, and plant species
 31 that have potential to occur in the analysis area. As a result of Council rulemaking in 2017, it is not
 32 necessary for the applicant to include in Exhibit Q information related to species that are listed only by
 33 the federal government, though the applicant may choose to do so at its own discretion. The applicant
 34 shall identify the species based on a review of literature, consultation with knowledgeable individuals,
 35 ODFW, and reference to the list of species published by the Biodiversity Information Center (formerly
 36 called the Oregon Natural Heritage Information Center).

37 The applicant has proposed a “phased survey” approach for data collection during the site certificate
 38 review process, and the Department understands that the entirety of the site boundary for the
 39 proposed facility may not yet been surveyed due to limited site access. On April 24, 2018 the
 40 Department issued a memo titled; “Energy Facility Siting Council Decisions for Linear Facilities with
 41 Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line”. This memo
 42 outlines how the Department will review applications and make recommendations to Council for
 43 Threatened and Endangered Species that have been evaluated in the pASC and ASC. For linear facilities,
 44 such as transmission lines, there may be situations where the applicant is able to conduct field surveys
 45 on several parcels within the site boundary but may not have access on adjacent parcels. In such

1 circumstances, it may be possible that the combination of on-site field surveys plus a desktop evaluation
 2 of existing data, aerial photography, and “over the fence” surveys may meet the information
 3 requirements of Exhibits Q. If the field survey coverage is sufficient for ODOE and ODFW to consider that
 4 the information provided is representative of the threatened and endangered plant and animal species
 5 occurrence or habitat, it is possible that this information could be sufficient to be evaluated for
 6 compliance with the Council’s Threatened and Endangered Species standard. Exhibit Q shall include as
 7 much information as possible about the results of the field surveys conducted to date for threatened
 8 and endangered species and state sensitive species in the analysis area. The schedule for future surveys,
 9 and the estimated date that results will be available, shall also be incorporated into Exhibit Q.

10 As for other biological resources, the application shall include information detailing the survey
 11 methodology, exact survey areas, and the results of all surveys. Surveys must be performed by qualified
 12 survey personnel during the season or seasons appropriate to the detection of the species in question.

13 The applicant shall provide proposed site certificate conditions for the Council’s consideration related to
 14 requirements for the applicant to complete all unfinished surveys within the project’s site boundary
 15 prior to construction. The proposed site certificate conditions shall also address submittal requirements
 16 for reporting future survey results, and the applicant’s proposed approach to document approval of final
 17 results by agencies or the Council prior to commencing construction activities.

18 **(r) Exhibit R – Scenic Resources**

19 **Applicable Paragraphs:** All paragraphs apply.

20 **Related Council and Other Standards:** Scenic Resources [OAR 345-022-0080]

21 A visual impact assessment is required as part of Exhibit R; while no specific methodology is required by
 22 EFSC rule, the applicant must demonstrate why the proposed facility is compliance with the Scenic
 23 Resources standard. Visual simulations or other visual representations are not required, but can provide
 24 important evidence for use by the Department and Council in understanding the potential visual impact
 25 of the proposed facility to Scenic Resources.

26 It is recommended the application include visual depictions (photo-simulations) of the project’s impact
 27 on scenic resources within the analysis area and that the visual simulations include depictions from
 28 select viewpoints in protected areas identified in Exhibit L that may be affected by the proposed facility.
 29 It is also recommended that any photo-simulations and visual impacts assessments of permanent
 30 structures include all facility components, as applicable. For the purposes of Exhibit R, “local” land use
 31 plans include state, county, and city planning documents or inventories. The applicant shall also describe
 32 the measures it will take to minimize significant adverse impacts to important scenic resources.

1 **(s) Exhibit S – Historic, Cultural and Archaeological Resources**

2 **Applicable Paragraphs:** All paragraphs apply.⁶

3 **Related Council and Other Standards:** Historic, Cultural, and Archaeological Resources [OAR 345-022-
4 0090]

5 **Discussion:** The application shall include the survey methodology, survey areas, and the results of all
6 surveys conducted for historic, cultural, and archaeological resources, as well as an analysis of any
7 significant adverse impacts anticipated and proposed mitigation measures. The applicant should work
8 closely with the State Historic Preservation Office (SHPO) to understand the report formatting and
9 submission requirements, and to receive guidance on any survey protocols. The application shall include
10 map(s) showing important historic trails located within the Historic, Cultural, and Archaeological
11 Resources analysis area, including the segments of the Oregon Trail that are listed or eligible for listing
12 on the National Register of Historic Places (NRHP), and discuss measures to avoid or mitigate for impacts
13 to historic trails. SHPO has advised that the proposed transmission line crosses many land forms that are
14 generally perceived to have a high probability for possessing archaeological sites and buried human
15 remains.

16 As discussed previously, the applicant has proposed a “phased survey” approach for data collection
17 during the site certificate review process. The Department understands that the entirety of the site
18 boundary for the proposed facility may not have yet been surveyed for cultural resources due to limited
19 site access. On April 24, 2018 the Department issued a memo titled; “Energy Facility Siting Council
20 Decisions for Linear Facilities with Restricted Access within a Site Boundary: Boardman to Hemingway
21 Transmission Line”. This memo outlines how the Department will review applications and make
22 recommendations to Council for historic, cultural and archaeological resources that have been
23 evaluated in the pASC and ASC. Once IPC gains access to previously restricted areas, IPC shall include
24 that information via a site certificate amendment process. Exhibit S shall include as much information as
25 possible about the field surveys conducted to date for cultural resources on state, private, and federal
26 lands, and the schedule for future surveys.

27 The application may include in Exhibit S (or as attachments to Exhibit S), the description of state and
28 federal workgroups, membership, purpose, and copies of any work plans that workgroups have
29 developed governing survey methodologies.

30 Exhibit S shall include analysis of how the evidence provided supports a finding by the Council that the
31 proposed facility meets the Council’s Historic, Cultural, and Archaeological Resources standard. It is
32 recommended that the applicant provide proposed site certificate conditions for the Council’s
33 consideration related to requirements for the applicant to complete all unfinished surveys within the
34 facility’s site boundary prior to construction. It is recommended any proposed site certificate conditions
35 also address submittal requirements for reporting future survey results, obtaining EFSC approval of
36 cultural resource survey documents, and the applicant’s proposed approach to document approval of
37 final results by agencies and the Council prior to commencing construction activities.

⁶ Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.501(11). Specific location information about cultural resources shall not be included in the text of application for a site certificate. Such information, including archaeological survey reports, shall be provided confidentially under separate cover after consultation with the Department. Confidential material shall also be provided directly to SHPO, following guidance and procedures from the Department and SHPO.

1 **(t) Exhibit T – Recreation**

2 **Applicable Paragraphs:** All paragraphs apply.

3 **Related Council and Other Standards:** Recreation [OAR 345-022-0100]

4 **Discussion:** The application shall analyze the importance of recreational opportunities in the analysis
5 area using the factors listed in OAR 345-022-0100(1), discuss any significant potential adverse impacts to
6 important recreational opportunities, and describe measures proposed to avoid, minimize or mitigate
7 those impacts. Please list all recreational opportunities in the analysis area and the applicant’s analysis
8 of whether those recreational opportunities are considered “important” or not. As described under the
9 Protected Areas standard section above, please note that compliance with the DEQ noise rules (Exhibit
10 X) does not correlate to compliance with the noise assessment considered in the Recreation standard.
11 Particularly, while construction noise is exempt from the DEQ noise rules, construction noise must be
12 considered under the Recreation standard. However, information developed to demonstrate
13 compliance with the DEQ noise rules (such as noise modeling) can be used in the assessment to meet
14 the Recreation standard. A visual impact assessment is required as part of Exhibit T; while no specific
15 methodology is required by EFSC rule, the applicant must demonstrate why the proposed facility is
16 compliance with the Recreation standard. Visual simulations or other visual representations are not
17 required, but can provide important evidence for use by the Department and Council in understanding
18 the potential visual impact of the proposed facility to important Recreation sites.

19 **(u) Exhibit U – Public Services**

20 **Applicable Paragraphs:** All paragraphs apply.

21 **Related Council and Other Standards:** Public Services [OAR 345-022-0110]

22 **Discussion:** The application shall provide information related to the facility’s potential impacts to the
23 ability of public and private providers within the analysis area to provide: sewers and sewage treatment,
24 water, storm water drainage, solid waste management, housing, traffic safety, police and fire
25 protection, health care and schools (OAR 345-022-0110). This includes estimated facility-related traffic
26 during construction and operation and the potential impact on traffic safety. Description of traffic
27 impacts shall include proposed transportation routes for the transport of heavy equipment and
28 shipments of facility components during construction, including proposed ground and air transportation
29 routes within the analysis area. The application shall also include an analysis of potential facility-related
30 impacts to fire protection services, including fire protection on forestland and rangeland.

31 The application shall demonstrate that the proposed facility will not result in significant adverse impact
32 to the ability of public and private providers within the analysis area to provide those services.

33 **(v) Exhibit V – Solid Waste and Wastewater**

34 **Applicable Paragraphs:** All paragraphs apply

35 **Related Council and Other Standards:** Waste Minimization [OAR 345-022-0120]; Public Services [OAR
36 345-022-0110]

37 **Discussion:** The application shall demonstrate compliance with the applicable standards, including the
38 waste minimization standard and public services standard. Include in the application evidence that
39 identified landfills have the capacity to accept the generated quantities of non-recyclable/non-reusable
40 waste.

41 The applicant shall comply with ODEQ regulations concerning the storage and management of
42 hazardous materials and the clean-up and disposal of hazardous waste. Compliance with the DEQ

1 regulations is independent of the EFSC process. Exhibit V shall include a list of all hazardous materials
2 that would potentially be stored or used at the facility site during construction and operation, and a
3 description of the applicant's plans and programs for storage of hazardous materials and management
4 of hazardous waste. If the applicant proposes any on-site fuel storage during construction, the fuel
5 storage areas and management plan shall be described in detail in the application.

6 The proposed facility will entail clearing activities through forested lands. Exhibit V shall contain
7 information on how the applicant will manage or dispose of the debris generated by clearing activities,
8 including brush disposal, as well as excess material from cut and fill.

9 **(w) Exhibit W – Facility Retirement**

10 **Applicable Paragraphs:** All paragraphs apply.

11 **Related Council and Other Standards:** Retirement and Financial Assurance [OAR 345-022-0050]

12 **Discussion:** The application shall provide an estimate of retirement costs, including a detailed
13 explanation and justification of the methodology it uses to estimate retirement costs. The estimated
14 retirement costs shall include information related to all facility components. The underlying details
15 regarding the estimated retirement costs for the facility components can be included in Exhibit B or in
16 Exhibit W of the application, but Exhibit W must clearly articulate the methodology and results. The
17 Council's Retirement and Financial Assurance standard requires evidence that the site can be restored,
18 following facility retirement, to a useful and non-hazardous condition .

19 **(x) Exhibit X – Noise**

20 **Applicable Paragraphs:** All paragraphs apply. However, because of the linear nature of the proposed
21 facility, the requirements of paragraph E are modified. Instead of one mile, to comply with paragraph E
22 the applicant must develop a list of all owners of noise sensitive property, as defined in OAR 340-035-
23 0015, within one-half mile of the proposed site boundary.

24 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]; DEQ Noise
25 Control [ORS 467.020 and ORS 467.030; OAR 340, Division 35]

26 **Discussion:** The application shall contain a noise analysis and information to support a Council finding
27 that the proposed facility, including any alternative routes proposed, will comply with the requirements
28 of OAR 340-035-0035, or that an exception or variance may be issued by Council.

29 **(y) Exhibit Y – Carbon Dioxide Emissions**

30 **Applicable Paragraphs:** Exhibit Y does not apply, because the proposed facility is not a base load gas
31 plant, a non-base load power plant, or a non-generating energy facility that emits carbon dioxide.

32 **(z) Exhibit Z – Cooling Tower Impacts**

33 **Applicable Paragraphs:** Exhibit Z does not apply because the facility does not have evaporative cooling
34 towers.

35 **(aa) Exhibit AA – Electric and Magnetic Fields**

36 **Applicable Paragraphs:** All paragraphs apply.

37 **Related Council and Other Standards:** General Standard of Review [OAR 345-022-0000]

38 **Discussion:** The provisions of Exhibit AA apply.

1 **(bb) Exhibit BB – Other Information**

2 Include information in Exhibit BB related to the following: Compliance with the ODFW Fish Passage rules
3 will be included in and governed by the site certificate. Provide evidence in this exhibit of the facility’s
4 compliance with the applicable Fish Passage rules OAR Chapter 635, Division 412.

5 **(cc) Exhibit CC – Other Law**

6 Exhibit CC requires the applicant to identify all state statutes and administrative rules and local
7 government ordinances containing standards or criteria that the proposed facility must meet for the
8 Council to issue a site certificate, other than statutes, rules, and ordinances identified in Exhibit E, if
9 necessary. The Department has not identified any other applicable statutes or rules that are not
10 addressed elsewhere in this project order.

11 **(dd) Exhibit DD – Specific Standards**

12 **Applicable Paragraphs:** Paragraph (C) applies.

13 **Related Council and Other Standards:** Specific Standards for Transmission Lines [OAR 345-024-0090]

14 **Discussion:** The Council applies specific standards for transmission lines under its jurisdiction in OAR
15 345-024-0090. The applicant shall provide analysis regarding compliance with OAR 345-024-0090.

16
17 **IV. ANALYSIS AREAS FOR THE PROPOSED FACILITY**

18 The analysis areas are the minimum areas that IPC must study for potential impacts from the
19 construction and operation of the proposed facility. Some of the analysis areas described in this Project
20 Order do not limit the applicant’s responsibility to assess the potential impacts of the facility. The
21 analysis areas are the areas in which impacts from the proposed facility are most likely to occur. If
22 significant impacts associated with the applicable Council standards⁷ could occur beyond the analysis
23 areas described here, then the applicant must assess those impacts in the application for a site
24 certificate and show how the facility would comply with the applicable standard with regard to the
25 larger area where impacts could occur. For all potential impacts, the analysis area includes all the area
26 within the site boundary, as defined in OAR 345-001-0010(55). The application for site certificate must
27 specifically describe the site boundary and provide a map showing the proposed site boundary,
28 including the transmission line corridor and all related or supporting facilities. All required assessments
29 in the application apply to the entire site boundary, which by definition includes all corridors under
30 consideration, including alternatives, as well as related or supporting facilities, and temporary laydown
31 and staging areas. The minimum required analysis areas are presented in Table 2.

⁷ OAR 345-022-0080 - Scenic Resources, OAR 345-022-0100 – Recreation, and OAR 345-022-0110 - Public Services directly reference the analysis area as described in the Project Order.

1 **Table 2. Analysis Areas**

Affected Standard or Resource	Exhibit	Analysis Area ⁸
Structural Standard	Exh. H	The area within the site boundary.
Soil Protection	Exh. I	The area within the site boundary.
Wetlands	Exh. J	The area within the site boundary.
Land Use	Exh. K	The area within the site boundary and one-half mile from the site boundary.
Protected Areas	Exh. L	The area within the site boundary and 20 miles from the site boundary, including areas outside the state if applicable to the Council’s standard.
Fish and Wildlife Habitat	Exh. P	The area within the site boundary.
Threatened and Endangered Species	Exh. Q	The area within the site boundary and one-half mile from the site boundary.
Scenic Resources	Exh. R	The area within the site boundary and 10 miles from the site boundary.
Historic, Cultural and Archaeological Resources	Exh. S	The area within the site boundary.
Recreational Opportunities	Exh. T	The area within the site boundary and two miles from the site boundary.
Public Services	Exh. U	The area within the site boundary and 10 miles from the site boundary.
Noise	Exh. X	The area within the site boundary and one-half mile from the site boundary.
Electric Transmission Lines	Exh. AA and DD	The area within the site boundary.

2

3 **V. NATIVE AMERICAN TRIBES**

4 The NOI listed the following tribes as “being expected to have an interest in the Project’s Proposed
 5 Corridor”: Burns-Paiute Tribe, Shoshone-Paiute Tribes of Duck Valley Indian Reservation, Confederated
 6 Tribes of the Umatilla Indian Reservation (CTUIR), Confederated Tribes of Warm Springs Reservation,

⁸ The applicant should note that analysis areas defined in this Project Order are to be used for the assessment of impacts to the associated resource. The applicant is not required to perform comprehensive field surveys of the entire analysis area if another method of impact assessment is suitable. The analysis areas are not coextensive with the areas identified by the applicant for field surveys for biological, cultural, and visual resources. However, the applicant should be aware that the area within the site boundary as it is defined in the Site Certificate must be completely surveyed prior to construction for, jurisdictional wetlands and waters of the state, biological and cultural resources using methodologies approved by ODOE and related state agencies.

1 Nez Perce Tribe, Confederated Tribes of the Colville Reservation, Fort McDermitt Shoshone-Paiute
2 Tribes, Shoshone-Bannock Tribes of Fort Hall Indian Reservation, and the Klamath Tribes.

3 In June 2012, the applicant contacted the Legislative Commission on Indian Services (LCIS) regarding
4 tribes, tribal lands, and tribal resources potentially affected by the B2H facility. In its response, the LCIS
5 identified three federally recognized tribal governments in Oregon that shall be consulted regarding the
6 proposed facility: Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Confederated Tribes
7 of the Warm Springs, and Burns Paiute Tribe. In addition, the LCIS recommended the applicant contact
8 out-of-state tribal governments, as the traditional territory of these tribes extends into Oregon near the
9 proposed facility. These tribes are the Confederated Tribes of the Yakama Nation, the Nez Perce Tribe,
10 and the Colville Confederated Tribes. The response from the LCIS shall be included as an attachment to
11 Exhibit S.

12 The affected tribes, as identified by the LCIS, provide technical review and recommendations in
13 reference to the Council's Historic, Cultural and Archaeological Resources Standard (OAR 345-022-0090).
14 The application shall include evidence of consultation with affected tribes regarding archaeological and
15 cultural sites and materials that may be found on the proposed facility site.

16 The Department understands that the proposed facility will require approval from federal agencies, and
17 that federal agencies are engaging in formal government-to-government consultation with affected
18 Indian tribes under the requirements of the National Historic Preservation Act (NHPA). To the extent it
19 aids in establishing compliance with the applicant's obligations under the EFSC review process, the
20 applicant may rely on the evidence resulting from the tribal consultations required by the NHPA. A
21 Programmatic Agreement (PA) to govern compliance with the NHPA has been finalized and executed.
22 The PA does not govern compliance with the EFSC Historic, Cultural, and Archaeological Resources
23 standard, though work conducted in support of the PA could be used to support a Council finding of
24 compliance with the Historic, Cultural, and Archaeological Resources standard.

25 The CTUIR provided detailed written comments on the NOI regarding impacts to First Food resources,
26 habitat fragmentation, introduction of weed species, effects to historic properties, insufficient noise and
27 visual analysis in the NOI. The CTUIR also noted the potential for cumulative impacts, cultural resource
28 impacts, and impacts to the Umatilla Indian Reservation. The CTUIR also provided several rounds of
29 comments on the amended preliminary application for site certificate (ApASC) in October, 2017 and
30 ongoing throughout the completeness review of the ApASC. On May 3, 2018 ODOE, the CTUIR, IPC, and
31 SHPO held a meeting at the Nixyáawii Governance Center on the CTUIR reservation. The purpose of the
32 meeting was to discuss concerns of the CTUIR and completeness issues that the CTUIR identified during
33 the reviewing agency comment period of the B2H ApASC. After the meeting, IPC coordinated directly
34 with the CTUIR to address their concerns in the applicable sections of the application. To the extent
35 these issues are matters within Council jurisdiction, the issues shall be addressed in the appropriate
36 application exhibit. Any permits or easements required by the CTUIR or other tribal governments are
37 outside of the Council jurisdiction and are the responsibility of the applicant.

38

39 **VI. COMMENTS FROM THE PUBLIC AND REVIEWING AGENCIES**

40 **(a) Public Comments**

41 In addition to the applicable statutes, rules, and local land use requirements listed in this order, the
42 application shall address issues arising from public comments (that are under the jurisdiction of the
43 Council) within the applicable exhibit of the ASC. Pursuant to OAR 345-015-0160(1)(g), concerns raised
44 in public comments during the joint ODOE-BLM scoping meetings following the NOI that occurred in

1 2010 shall be addressed in the ASC. Over 450 comments were received electronically, by mail, phone,
 2 and fax based on the NOI and the scoping meetings. Public comments were summarized in the First
 3 Amended Project Order issued in December, 2014. All comments received during the NOI phase were
 4 forwarded to IPC and the BLM. The Department summarized the issues addressed in the public
 5 comments in the First Amended Project Order according to applicable Council standards; however, the
 6 comments have been removed from the Second Amended Project Order to reduce the risk of
 7 misinterpreting the intention of the individual comment. The applicant shall address the concerns of the
 8 public based on comments received during the NOI phase in the ASC if appropriate under Council
 9 standards, applicable rules, and applies to the facility as proposed in the ASC

10 **(b) Reviewing Agency Comments**

11 The Department received comments from numerous reviewing agencies during the reviewing agency
 12 comment period on the NOI in 2010 and the reviewing agency comment period on the pASC in 2013.
 13 Pursuant to OAR 345-021-0050, the ApASC was distributed to the updated reviewing agency list
 14 provided in Table 2 in July, 2017. ODOE received over 1,100 general application comments with requests
 15 for additional information (RAI's) from 19 reviewing agencies, Special Advisory Groups and Tribal
 16 Governments. All of the reviewing agency comments have been provided under separate cover to the
 17 applicant and are incorporated by reference in this order. The applicant shall address the concerns (that
 18 are under the jurisdiction of the Council) of the reviewing agencies within the applicable exhibit of the
 19 application.

20
 21 **VII. USE OF INFORMATION IN THE FINAL ENVIRONMENTAL IMPACT STATEMENT**

22 Pursuant to ORS 469.370(13), EFSC will review the application for site certificate, to the extent feasible,
 23 in a manner that is consistent with and does not duplicate BLM review under NEPA. This includes
 24 elimination of duplicative study and reporting requirements and EFSC use of information prepared for
 25 the federal review.

26 Many EFSC standards and rules of other state agencies in Oregon require field work to gather the
 27 information needed to demonstrate compliance. The Department has worked with state agencies and
 28 county planners to determine to, the extent possible, that the field work required for the site certificate
 29 application and for the NEPA review can be done concurrently by the applicant's teams of field
 30 scientists. Technical reports describing the results of site investigations for each resource area under
 31 NEPA may be used to provide evidence of the ability to meet the Council's standards. However, the
 32 NEPA requirements and EFSC standards are different, and compliance with NEPA does not ensure
 33 compliance with an EFSC standard. Some apparent differences between NEPA and EFSC requirements
 34 include:

- 35 • In addition to characterizing habitat, wetland areas, and other information required for the FEIS,
 36 the application for site certificate must address state identified threatened and endangered and
 37 state sensitive species, and comply with the EFSC Fish and Wildlife Habitat standard, which
 38 references ODFW's Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0025). This is not
 39 be a NEPA requirement.
- 40 • It is not clear to what extent farmland and soils are protected in the NEPA review. For example,
 41 the FEIS addresses erosion issues, but it is not clear, at this time that NEPA analysis would
 42 adequately demonstrate compliance with the Council's Soil Protection standard.
- 43 • The level of geologic reporting and geotechnical investigation required by the EFSC Structural
 44 Standard are different from the NEPA requirements.

- 1 • Recreation may be addressed in the FEIS but it is unclear at this time as to whether the
2 information that will be provided in the FEIS will be adequate to demonstrate compliance with
3 the Council’s Recreation standard.
- 4 • Private land easements or land acquisitions are outside EFSC jurisdiction. On April 24, 2018 the
5 Department issued a memo titled; “Energy Facility Siting Council Decisions for Linear Facilities
6 with Restricted Access within a Site Boundary: Boardman to Hemingway Transmission Line.”
7 This memo outlines how the Department will review applications and make recommendations
8 to Council for biological, cultural and archaeological resources that have been evaluated in the
9 pASC and ASC. For linear facilities, such as the B2H transmission line, there are situations where
10 the applicant is able to conduct field surveys on several parcels within the site boundary but
11 may not have access on adjacent parcels. In such circumstances, it may be possible that the
12 combination of on-site field surveys plus a desktop evaluation of existing data, aerial
13 photography, and “over the fence” surveys may meet the information requirements of Exhibits
14 H, J, P, Q, and S. If the field survey coverage is sufficient for ODOE and the applicable reviewing
15 agencies to consider that the information provided is representative of the biological species
16 occurrence or habitat, it is possible that this information could be sufficient to be evaluated for
17 compliance with the applicable Council standard. Such may be the case for the Council’s Fish
18 and Wildlife Habitat standard, Threatened and Endangered Species Standard, and the Structural
19 Standard that require field surveys. Once site access is gained to unsurveyed areas for wetlands
20 and waters of the state and historic, cultural and archaeological resources, that survey
21 information must be provided to ODOE and EFSC via an amendment process for compliance
22 with the applicable Council standard and statutory and obligations, for those specific areas and
23 resources, if identified. Nevertheless, the applicable exhibits in the ASC shall include as much
24 information as possible about the results of the field surveys conducted to date in the analysis
25 area.

26
27 For these reasons, it is recommended that work plans for resource reports that support the NEPA FEIS
28 be written so that one set of ground studies collects all the information needed for both the FEIS and
29 the application for site certificate. Where mitigation is proposed, the applicant may draft a single
30 mitigation plan that meets both BLM and EFSC requirements.

31 To the extent that IPC will rely on the FEIS (or its supporting resource reports) for evidence of
32 compliance with EFSC standards, ODOE suggests that IPC develop a document that cross-references the
33 information from the resource reports and the FEIS with the information that is understood to be
34 needed for the EFSC application. This document may be prepared before the application for site
35 certificate is submitted to assist the applicant and ODOE with identifying areas where the NEPA process
36 alone may not require enough information for a complete EFSC application. IPC can then supply the
37 needed additional information in the application for site certificate.

38
39 **VIII. EXPIRATION DATE OF THE NOTICE OF INTENT**

40 In accordance with OAR 345-020-0060, the Boardman to Hemingway Transmission Line NOI was
41 originally scheduled to expire on July 6, 2012. Pursuant to OAR 345-020-0060(1) on March 22, 2012, IPC
42 submitted a petition requesting a one-year extension of the expiration of the NOI. On April 25, 2012, the
43 Council granted IPC’s petition and established the expiration date for the NOI as July 6, 2013. IPC
44 submitted a pASC on February 27, 2013 ahead of the NOI expiration date. Due to route changes, IPC
45 submitted the ApASC on July 19, 2017.

IX. PROJECT ORDER AMENDMENT AND APPLICATION COMPLETENESS

The Council or the Department may amend this project order at any time [ORS 469.330(4)]. Amendments may include changes to the analysis areas. In accordance with ORS 469.503(1), to issue a site certificate, the Council must determine that the proposed facility complies with the applicable standards adopted by the Council pursuant to ORS 469.501, or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet, and that the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility, ORS 469.503(3).

Under OAR 345-015-0190(5), when the Department determines the application for a site certificate contains adequate information for the Council to make findings or impose conditions on all applicable Council standards, the Department may find the application for a site certificate complete. The Department may find the application complete without requiring the applicant to submit all information described under OAR 345-021-0000 and -0010. Notwithstanding a determination that an application for a site certificate is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application for a site certificate, OAR 345-015-0190(7).

X. APPLICABILITY AND DUTY TO COMPLY

Failure to include an applicable statute, rule, ordinance, permit or other requirement in this project order does not render that statute, rule, ordinance, permit or other requirement inapplicable, nor in any way relieves applicant from the duty to comply with the same.

OREGON DEPARTMENT OF ENERGY



Todd Cornett, Assistant Director
Energy Facility Siting Division
Oregon Department of Energy

Date of Issuance: July 26, 2018